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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Nondiscrimination in the Distribution
of Interactive Television Services Over
Cable

CS Docket No. 01-7

COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV")¹ hereby offers the following comments in connection with the Commission's Notice of Inquiry ("Notice") in the above-captioned proceeding.

I. INTRODUCTION

The *Notice* raises a number of questions related to Interactive Television ("ITV"), an emerging suite of services offered or soon to be offered by cable operators and other Multichannel Video Programming Distributors ("MVPDs"), featuring "*inter alia*, increased viewer control of the television viewing experience; integration of video and data services, including web content; real-time interaction with other viewers; and television commerce."²

In particular, given the still-dominant position of the cable industry in the MVPD market,³ the Notice is focused on the questions of whether cable operators have a dominant

¹ DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

² *Notice* at ¶ 1.

³ According to the Commission's latest report to Congress on the status of MVPD competition, 80% of all MVPD subscribers still receive their video programming from a franchised cable operator, leaving cable as the "dominant technology for the delivery of programming to consumers in the MVPD marketplace." In the Matter of Annual

platform for the delivery of ITV services, at least in the near term, and whether the Commission should impose safeguards designed to ensure that cable operators cannot use their market power to stifle the development of ITV services or discriminate against other nascent ITV providers.⁴

DIRECTV supports the continued monitoring by the Commission of the potential for anticompetitive behavior by cable operators with respect to the development of ITV services. However, on balance, DIRECTV believes that it is premature for the Commission to regulate ITV services at this time. In addition, to the extent that ITV regulation may some day be imposed, DIRECTV also wishes to clarify that Personal Video Recorder ("PVR") product features should not be included in any definition of ITV services.

II. IT IS PREMATURE FOR THE COMMISSION TO INITIATE ITV REGULATION

DIRECTV agrees with the proposition that it is premature to consider regulating ITV services at this time.⁵ ITV services and technologies are still evolving to find or create markets for ITV services. Indeed, the Commission itself begins this inquiry by observing that "the nature of ITV services is evolving rapidly, with constant and continuous technological changes and evolving business models" that "mak[e] it difficult" even to define them.⁶

Regulatory intervention at this nascent stage of ITV development makes little sense. There are as yet no dominant providers of ITV services, and the marketplace is still in the

Assessment of Competition in the Market for the Delivery of Video Programming, *Seventh Annual Report* (rel. Jan. 8, 2001) (2000 MVPD Competition Report"), at ¶ 5.

⁴ See Notice at ¶ 3.

⁵ See *id.*, Dissenting Statement of Commissioner Harold W. Furchtgott-Roth.

⁶ *Id.* at ¶ 6.

process of sorting out the technological standards that will govern ITV service delivery.⁷ Heavy-handed regulation, in the absence of any compelling need or problem, poses an unacceptable risk of inadvertently stifling investment and innovation in ITV at a critical juncture in the service's development.

All of this said, it is nevertheless true that incumbent cable operators possess MVPD market power today, and it is possible that they will be able to leverage this dominance in a fashion that could have anticompetitive effects on nascent ITV services and emerging ITV providers. If this happens, it may be necessary to ensure that competing providers of ITV services have access on a non-discriminatory basis to ITV enhancements, and to the extent that it is provided by vertically integrated cable programming affiliates, ITV content.⁸ Thus, DIRECTV recommends continued monitoring by the Commission of the ITV marketplace even if regulation is not initiated at this time.

III. PERSONAL VIDEO RECORDER SERVICES SHOULD NOT BE CHARACTERIZED AS ITV SERVICES

DIRECTV wishes to address one definitional issue raised in the *Notice* with respect to the potential regulatory characterization of PVR products such as TiVO or RePlay. While the

⁷ Examples include the efforts of the Advanced Television Enhancement Forum ("ATVEF"), whose standards define a common set of requirements for the creation, transport and delivery of ITV services, *see Notice* at ¶ 11, n.9, and CableLabs' OpenCable Application Platform ("OCAP"), which is furthering the development of interoperable cable set-tops offering ITV and other advanced digital services.

⁸ DIRECTV notes, for example, the vitally important role that the program access provisions of the 1992 Cable Act and the Commission's implementing regulations played in breaking the cable industry's stranglehold on vertically integrated program content in the years immediately preceding the launch of commercial DBS service. *See* 47 U.S.C. § 628; 47 C.F.R. § 76.1000. The program access law and rules remain vitally important, and similar safeguards could be required with respect to ITV services.

definition of ITV services is still evolving, it is important for the Commission to acknowledge that the definition should *not* encompass PVR devices, features or functionalities.

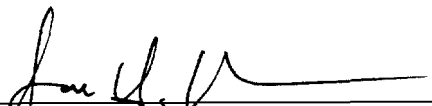
PVR capability does not really comprise a "service" at all -- it is more appropriately thought of as a set of product features similar to a videocassette recorder. Set-top box manufacturers, for example, are providing native PVR features in their newest products, but there is no ITV service provider involved. For these reasons, it would be a mistake for the Commission to characterize PVR functionality as an ITV "service" in the event that regulation of ITV services is ever imposed. The Commission does not regulate VCRs or cameras; it should not subject PVR capability to regulation, either.

IV. CONCLUSION

The Commission should refrain from ITV regulation at this point in the service's development. To the extent that there is a Commission-imposed definition of ITV services, the term should not encompass PVR products, features or functionalities, for the reasons that DIRECTV has explained herein.

Respectfully submitted,

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